The Cambridge Wire Cloth Company, Inc. *and* United Steelworkers of America, AFL-CIO.
Cases 5-CA-9173 and 5-RC-10138

July 6, 1981

SUPPLEMENTAL DECISION AND ORDER

A representation election was conducted on September 27, 1977, pursuant to a Decision and Direction of Election by the Acting Regional Director for Region 5. The tally of ballots furnished the parties after the election showed 148 votes cast for and 103 against the Union, with 1 void and 2 challenged ballots. Respondent filed timely objections to conduct affecting the results of the election, alleging essentially that the Union (1) defaced official election notices; (2) coerced and restrained employees and interfered with their free election choice by threatening violence and retaliation against those employees who did not support the Union; (3) made misleading and material misrepresentations regarding the Union's history of engaging in strikes and the possibility of future strikes, and regarding the financial condition of Respondent, without affording Respondent sufficient opportunity to rebut such misrepresentations; and (4) made misleading and material misrepresentations concerning affiliation of Respondent's employees with a local union. The Regional Director conducted an investigation and, on December 2, 1977, issued his Supplemental Decision and Certification of Representative in which he overruled Respondent's objections and certified the Union. Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative was denied by the Board on December 30, 1977, on the grounds that it raised no substantial issue warranting review.

Subsequently, by letter dated January 11, 1978, the Union requested that Respondent meet for purposes of collective bargaining. By letter dated January 20, 1978, Respondent refused to bargain with the Union on the grounds that the Union was improperly certified. Thereafter, the Union initiated unfair labor practice charges which culminated in the Board's Decision and Order[1] wherein the Board again denied Respondent's request for a hearing on the matters raised by Respondent's objections to the aforementioned election. Thus, the Board viewed Respondent's request as an attempt to relitigate issues raised and resolved in the underlying representation case. The Board therefore granted the General Counsel's Motion for Summary Judgment, found that Respondent unlawfully refused to bargain in violation of Section 8(a)(5) of the National Labor Relations Act, and ordered it to bargain upon request.

On June 9, 1980, the United States Court of Appeals for the Fourth Circuit issued its decision in this proceeding,[2] wherein it denied enforcement of the Board's Order and remanded the case to the Board. The court found it unnecessary to address the merits of Respondent's objections to the election, because it found that the Board had failed to comply with its own regulations. More specifically, the court adopted the reasoning and holding of the Sixth Circuit Court of Appeals in *Prestolite Wire Division* v. *N.L.R.B.*, 592 F.2d 302 (6th Cir. 1979), a case involving objections to a consent election held pursuant to Section 102.62(b) of the Board's Rules and Regulations. The Regional Director there rendered his report on objections on the basis of an administrative investigation of the objections, rather than on the basis of an evidentary hearing on the matters raised by the objections. The court held that, where the Board considers exceptions to such a report on objections, it is the better practice for the Regional Director to be responsible for transmitting to the Board all of the materials considered by him in reporting on the objections, rather than simply permitting the excepting party, pursuant to Section 102.69(g) of the Board's Rules and Regulations, to append to its exceptions copies of documents it has timely submitted to the Regional Director and which were not included in the Regional Director's report on objections.[3]

In remanding the case to the Board, the court herein directed the Regional Director to transmit to the Board for its review all the materials considered by him in his Supplemental Decision and Certification of Representative in Case 5-RC-10138, in which he overruled Respondent's objections to the election. Accordingly, we have received and re-

[1] *The Cambridge Wire Cloth Company, Inc.*, 236 NLRB 1326 (1978).

[2] *N.L.R.B.* v. *The Cambridge Wire Cloth Company, Inc.*, 622 F.2d 1195 (4th Cir. 1980).

[3] The court in *Prestolite* emphasized that it was not "expressly ruling that the Regional Director is invariably required under Section 102.69(g) to transmit to the Board all of the materials considered by him (although the language says 'shall')." Rather, as indicated, the court simply opined that "the better practice is to do so." Subsequently, the Sixth Circuit has gone further and held that Sec. 102.69(g) requires the Board to review all the documentary evidence relied on by the Regional Director in his disposition of objections to an election on the basis of an administrative investigation; that it is an abuse of the Board's discretion for it to adopt the report of a regional director without reviewing the documentary evidence relied on by the Regional Director; and that the regional director has the burden of transmitting the record, as defined in the first sentence of Sec. 102.69(g), to the Board for such review. *N.L.R.B.* v. *North Electric Company, Plant No. 10*, 644 F.2d 580 (6th Cir. 1981), citing *N.L.R.B.* v. *Curtis Noll Corp.*, 634 F.2d 1027 (6th Cir. 1980). The Fourth Circuit in the instant proceeding found that by failing to obtain from the Regional Director all of the materials considered by him in his disposition of the objections to the election, the Board failed to comply with its own regulations.

viewed the entire Regional Office file in the representation proceeding and, for the reasons discussed below, we affirm the Regional Director's overruling of Respondent's objections and his certification of representative.

The Objections

Objection No. 1

> 1. Subsequent to the posting by the Employer of the official election notices from the National Labor Relations Board and prior to the date of the election, the Petitioner, through its agents, representatives, adherents and others, in clear contravention of the Board's rules and violation of its stated prohibition against such defacement of said notice, defaced official election notices by affixing Petitioner's emblem containing the words "Vote Yes!" inside the sample ballot contained in those official election notices. This occurred in two (2) locations of the plant, including the employee cafeteria where substantially all eligible voters would have observed it and in which the election itself was subsequently held, thereby indicating to eligible voters that the Board favored a choice of the Petitioner in the election held on September 27.

In support of this objection, Respondent submitted the affidavit of its vice president for manufacturing, Everett Creighton. Therein, Creighton stated that he posted the Board's official notices of election in three locations in the plant—the employee cafeteria; the break area of the fabrication department; and the bulletin board area of the wire cloth department. All three notices were covered with transparent plexiglass over the area on the notice in which the Board's sample ballots were reproduced.

On September 22, 1977,[4] the day after the notices were posted, and 5 days before the election, Robert Creighton, Respondent's production control manager, observed that the plexiglass covering the notice in the cafeteria had been affixed with a union "Vote Yes" sticker. The sticker was red, white, and blue, approximately 2 inches in diameter, and was affixed on the plexiglass directly over the "Yes" box on the sample ballot in the notice. Respondent had the sticker removed immediately. The same day, Everett Creighton found that another union "Vote Yes" sticker had been affixed to the plexiglass covering the notice in the break area of the fabrication department. This sticker was situated about 1 inch above the "No" box on the sample ballot. This sticker was also removed immediately.

On September 26, the day before the election, Everett Creighton observed that a union "Vote Yes" sticker had again been affixed to the plexiglass covering the election notice in the cafeteria, approximately 1 inch above, and centered over, the "Yes" and "No" boxes on the sample ballots; this sticker was removed immediately.

Creighton averred in his affidavit that the notices were policed by himself and others periodically to insure that they were not defaced, and that he took every reasonable measure to avoid such defacement.

Respondent contends that despite the fact that it cannot identify the persons who actually placed the stickers on the notices, the Union is nevertheless responsible as the notices were defaced with union-issued campaign emblems. Respondent further contends that the presence of the "Vote Yes" stickers on the notices gave the employees the impression that the Government endorsed the Union, thus giving the Union partisan advantage.

The Union denies knowledge of the alleged misuse of its compaign stickers. However, it asserts that the "Vote Yes" stickers as well as other campaign emblems were available to anyone in attendance at any of its numerous meetings held throughout the campaign.

Thus, part-time Union Organizer Ray Johnson stated, in his affidavit, that the Union held from 8 to 10 mass meetings during the organizing campaign, and that union brochures and "Vote Yes" stickers were freely available to all in attendance. Additionally, according to Johnson, for about 2-1/2 weeks prior to the election, employees would visit his motel room almost every day and take union brochures, pamphlets, and "Vote Yes" stickers which were always available on a table in his room. These same materials were also available in the motel room of Union Chief Organizer Charles Barranco.

Employee Collison stated in his affidavit that, at the union organizing meetings which he attended in Chief Organizer Barranco's motel room, attendees were asked to take union stickers and try to get their coworkers to put them on their cars. Collison confirms Johnson's statement that union stickers and other promotional materials were left out on a table in Barranco's motel room and that anyone who wanted such materials needed only come to the room and take them. Collison also stated that he noticed union stickers placed on employees' toolboxes, as well as on some forklifts and other machinery.

[4] All dates hereinafter are 1977 unless specified otherwise.

As the Regional Director noted in his Supplemental Decision, the defacement of an election notice by an agent of either party normally warrants setting aside the election. *Mademoiselle Shoppe, Inc.*, 199 NLRB 983, 984, 990 (1972). However, the Regional Director correctly found on the basis of the information available to him that the placing of the Union's "Vote Yes" stickers on the plexiglass covering the sample ballot could not be directly attributed to the Union or any of its agents. Thus, the Regional Director properly declined to set the election aside on those grounds.[5]

Moreover, the "Vote Yes" stickers in question were obviously union materials. Also, they were affixed to the plexiglass covering *over* the sample ballot. Under these circumstances, there could be no reasonable belief or suspicion among the employees that the prounion message on the stickers might have emanated from the *Board*, and thus served as an endorsement by the Board of the Union in the forthcoming election.[6]

Accordingly, Respondent's Objection 1 is overruled.

Objection No. 2

> 2. Subsequent to the filing of the petition herein and prior to the election on September 27, 1977, the Petitioner, by and through its agents, representatives, adherents and others, coerced and restrained employees and otherwise interfered with their right to a free and fair choice by threats of economic and other losses and retaliation if they did not support and vote for the Union and assure its success at the polls; and harassed and engaged in abusive conduct toward employees in order to coerce eligible voters into voting for Petitioner and to discourage said employees from expressing their true feelings either to fellow employees or in the voting booth.

Employee Lowell Moore testified in his affidavit that on September 26, the day before the election, he witnessed a conversation between employees Bob Simmons and John Trice in which Simmons asked Trice how he was doing to vote in the election. When Trice replied that he did not know, Simmons told Trice that if he did not vote for the Union, "he would not be able to work at the Company if the Union did not win the election" and Simmons also told Trice that if Trice did not vote for the Union, and if the Union nevertheless won, Trice would "be visited at his home by Union members who would beat him up."[7]

Still, according to Moore, on September 22, 5 days before the election, employee Jeff Robbins told him that if the Union did not win the election he (Robbins) would "beat the hell out of" Department Foreman William Foxwell. Later that same day, according to Moore, he observed Robbins and fellow employee John Burton engaged in what appeared to Moore to be an argument. The next day, Robbins told Moore that if the Union did not win the election Robbins would "beat the hell out of Foxwell and Burton." According to Moore, Robbins' threats were known by "nearly everyone" in the 25-employee finishing department.

While there is no evidence that Robbins himself ever conveyed any of these alleged threats directly to the named individuals, Finishing Department Foreman William Foxwell stated in his affidavit that, approximately 3 days before the election, Moore and other employees in his department informed him that Robbins, a welder, "had let it be known" that if the Union did not win the election Robbins would "beat the hell" out of Foxwell and employees John Burton and Stuart Haring.[8]

Burton stated in his affidavit that, about 2–3 weeks before the election, Moore told him that he had "better watch [himself]" because Robbins had told Moore that Foxwell, Burton, and Haring needed a whipping. Burton stated that Robbins himself never told *him* he wanted to whip him or harm him in any way. Burton also stated that he did not know why Robbins would have made such a statement, because he and Robbins had never had any problems or arguments and had gotten along well in the 3 years they had known each other.

Robbins acted as a union observer at the election. In his affidavit, he denied ever telling anyone that he would beat anyone up if the Union did not win the election.

Respondent contends that Robbins was an agent of the Union at the time the alleged threat was made. In support of this contention, Respondent avers that Robbins was a member of the Union's in-plant organizing committee, that he regularly attended union meetings, was very vocal in his support for the Union, distributed union literature, attended the NLRB preelection hearing with the

[5] *Patsy Bee, Inc.*, 249 NLRB 976, 986–987 (1980); *Keller Dye & Finishing Company*, 184 NLRB 524, 525 (1970); *The Halsey W. Taylor Company*, 147 NLRB 16, 19 (1964).

We find no merit in Respondent's contention that the free availability of union stickers, and the Union's failure to instruct union adherents in the responsible use of such stickers "was calculated to result in" defacement of the election notices.

[6] Cf. *EDM of Texas, Div. of Chromalloy American Corp.*, 245 NLRB 934 (1979); *Mercury Industries, Inc.*, 238 NLRB 896 (1978).

[7] The Regional Director's investigative file does not contain affidavits from either Simmons or Trice.

[8] Nevertheless, no specific evidence was submitted in support of *Moore's* assertion that Robbins' threats were known by "nearly everyone" in the 25-employee finishing department.

Union, and acted as one of the Union's observers during the election. Respondent further contends that Robbins was privy to the Union's campaign strategy.

In ruling on this objection, the Regional Director implicitly rejected, *arguendo*, Robbin's denial of having made the threats in question. Nevertheless, the Regional Director overruled this objection on the grounds that Robbins was not an agent of the Union, and that the threats, even if made, were not attributable or imputable to the Union.

In this regard, Robbins stated in his affidavit that, although he attended most of the Union's organizing meetings during the 3-month period prior to the election, he never "formally" joined the Union's in-plant organizing committee. Robbins also stated that he never requested employees to sign union membership cards. He did, however, as noted above, act as a union observer at the election.

Employee James Slacum stated in his affidavits that he observed Robbins passing out union literature on only one occasion, about 4 days prior to the election. However, Slacum did state that on or about September 21, approximately 6 days prior to the election, Robbins showed him and two or three other employees a letter which Robbins said was from Union Representative Barranco to Respondent's president, inviting the latter to a debate at a union meeting; Robbins indicated that Evans had not yet received the letter, but that he soon would.

Employee William Collison stated in his affidavits that he and "a number of other employees," including Robbins, attended a meeting in Union Representative Barranco's motel room in Cambridge. According to Collison, the employees were told that the Union needed an "in plant organizing committee" at the Company. Barranco explained that it would not be possible for him to gain access to the plant, but that the in-plant organizing committee "would be able to speak and act for him." However, according to Collison, to his knowledge an in-plant organizing committee was never actually formed by the Union. All employees who attended this and subsequent union organizational meetings were asked to take and distribute union stickers, and to try to obtain signed union authorization cards.

According to Collison, he and Robbins were among a group of five or six employees who regularly attended these informal organizing meetings in Barranco's motel room, to which all interested employees were invited.[9] According to one of Collison's affidavits, the aforementioned group of regular attendees were selected by the Union to (1) distribute union campaign literature, including cards and union stickers, to their fellow employees; (2) solicit authorization cards; (3) tell employees when union organization meetings were scheduled, and invite employees to attend; (4) call and visit employees at their homes; (5) design posters in support of the Union; and (6) generally encourage employees to vote for the Union. However, according to Collison's other affidavit, he was not aware that the Union ever picked a select number of employees who were to form any kind of in-plant organizing committee. In this affidavit, Collison explained that he felt he, Robbins, and the other five or six particularly strong union supporters referred to above did do more than other employees during the campaign. In any event, upon Collison's "information and belief" nearly everyone in the plant looked to him,[10] Robbins, and the other five or six regular attendees at the union organization meetings as the Union's principal in-plant supporters and spokesmen. Thus, according to Collison, it was "common knowledge" in the plant that those interested in signing cards or hearing the Union's position on campaign issues could speak with Collison, Robbins, or any of the other five or six Union supporters referred to above. Nevertheless, Collison stated that Barranco asked these strong union supporters to keep him informed of things happening in the plant, and to encourage employees to attend union meetings so that he (Barranco) could answer any questions that they might have.

Union Organizer Ray Johnson stated in his affidavit that he was in charge of all volunteer in-plant organizers. By June-July 1977, approximately 40–50 employees had signed volunteer organizer cards, and comprised the Union's in-plant organizing committee. These employees were not paid for their activities, which were strictly voluntary, and to Johnson's knowledge the Respondent was never made aware of the names of the employees on the in-plant committee. Johnson does not recall Robbins ever signing a volunter organizer card, although he stated that Robbins did support the Union during the campaign, and in fact Robbins and co-employee William Collison volunteered to be union observers at the election.[11]

It thus appears from the evidence contained in the affidavits summarized above that an informal in-plant organizing committee was formed, which Robbins himself did not "formally' join. Moreover, according to Robbins, he never solicited employees

[9] Collison stated, however, that about 3 weeks before the election he stopped supporting the Union.

[10] Presumably prior to the time he stopped supporting the Union.

[11] Collison later changed his mind, and did not actually serve as an observer.

to sign authorization cards. He did, however, act as a union observer at the election. Collison's statements about whether or not the Union specially selected him, Robbins, and five or six other employees to perform the tasks enumerated above is inconclusive.

But given that Robbins was a union election observer, and assuming, *arguendo*, that Robbins was a member of the in-plant organizing committee, we nevertheless find, for the reasons set out below, that Robbins was not an agent of the Union, and that therefore his alleged threats are not imputable to the Union.[12]

Employee members of an in-plant organizing committee are not, simply by virtue of such membership, agents of their union for the purpose of making threats or statements.[13] Similarly, service as a union election observer does not constitute one an agent of the Union.[14] Nor is card solicitation sufficient to show agency status.[15] Only where the in-plant organizing committee is itself shown to be an agent of the union will the conduct of committee members be imputed to the union. In this case, it is clear that the in-plant organizing committee was not an agent of Petitioner.

First, assuming *arguendo*, as did the Regional Director, that Robbins actually made the statements which Moore attributed to him, there is no evidence that the Union either authorized or condoned or was even aware of Robbins' statements to Moore.[16] (There is no evidence that Robbins himself ever conveyed any threats to the named persons.)

As to the agency status of the in-plant organizing committee, the evidence establishes that it was without any formal structure and was composed of any and all interested employees who gave their support voluntarily and without pay. Moreover, there were two paid union representatives staying in a local motel prior to the election, whose presence and availability were known to the employees. Under these circumstances, we find that the in-plant organizing committee was not an agent of the Union, and that, assuming *arguendo*, Robbins was a member of the committee, and that he made the statements Moore said he did,[17] his comments are nevertheless not imputable to the Union.[18]

As neither Simmons nor Robbins has been shown to be an agent of the Union, their statements, as attributed to them by Moore, are not imputable to the Union. The statements, attributed by Moore to Robbins and Simmons, as the statements of individual employees not acting on behalf of any party to the election, would tend to have less effect upon voters than they would have had if they been attributable to either party.[19] Cast in this light, and in the total absence of evidence of any violence, we find that the conduct engaged in by Simmons and Robbins was isolated and not sufficiently substantial in nature to create a general environment of fear and reprisal such as to render a free choice of representative impossible.[20]

Thus, Respondent's Objection 2 is overruled.

Objection Nos. 3 and 4

[12] As to Simmons, Respondent does not contend, nor does the evidence show, that he was a member of the in-plant organizing committee or in any other way even arguable acting on behalf of the Union in his alleged remarks to Trice. Respondent merely contends that Simmons was a "strong Union adherent," described by Moore as being "very outspoken about the Union." We find these to be wholly insufficient evidentiary grounds upon which to impute Simmons' remarks to the Union.

[13] See *Beaird-Poulan Division, Emerson Electric Company*, 247 NLRB No. 180, ALJD, sec. C, 9 (1980), and cases cited therein.

[14] See *Tennessee Plastics, Inc.*, 215 NLRB 315, 319 (1974); *Owens Corning Fiberglas Corporation*, 179 NLRB 219, 223 (1969).

[15] See *Firestone Steel Products Company, a Division of Firestone Tire and Rubber Company*, 235 NLRB 548, 550 (1978).

[16] *Owens-Corning Fiberglas Corp.*, *supra*.

[17] As noted above, Robbins' testimony is to the contrary.

[18] See *Beaird-Poulan Division*, *supra*; *Firestone Steel Products*, *supra*. See also *Bufkor-Pelzner Division, Inc.*, 197 NLRB 950 (1972), distinguishing *International Woodworkers of America, AFL-CIO (Central Veneer, Incorporated)*, 131 NLRB 189 (1961); *Hampton Merchants Association, et al.*, 151 NLRB 1307 (1965); and *Local 340 International Brotherhood of Operative Potters, AFL-CIO (Macomb Pottery Company)*, 175 NLRB 756 (1969). Also compare *N.L.R.B. v. Georgetown Dress Corporation*, 537 F.2d 1239 (4th Cir. 1976), denying enforcement *sub nom. International Ladies Garment Workers' Union, AFL-CIO*, 214 NLRB 706 (1974), wherein the court found in-plant committee members to be agents of the union, so that the members' misconduct was attributable to the union under the principle of apparent authority. Thus, the court there concluded that, while the committee members did not act under "express authority" from the union, the "union [was] chargeable with the misdeeds under the principle of apparent authority. The committee members in the eyes of other employees were the representatives of a union on the scene and the union authorized them to occupy that position," 537 F.2d at 1244. In *Georgetown*, however, the union had little direct contact with the employees, dealing predominantly through the in-plant organizing committee as the on-scene authorized representative of the largely unseen union. But in the instant case, the presence of the Union in Cambridge, in the persons of its paid organizers, Barranco and Johnson, was open, continuous, and known to and relied on by the employees themselves. As seen, the Union held 8–10 mass meetings during its organizational campaign. Also, employees were free to, and did on a daily basis visit either Barranco or Johnson at their headquarters in the motel in Cambridge were they were staying during the campaign. With the Union itself so prominent, active, and easily accessible to the employees in the instant case, it is much less likely than it was in *Georgetown* that the employees would view and accept the instant in-plant organizing committee as the on-scene authorized representative of the very visible and accessible Union herein. Indeed it is unlikely that the instant employees would consider the in-plant organizing committee to be the agent of the Union, when the Union's strong presence in the area would make any such agency relationship unnecessary. In this regard, employee Collison, a particularly active union adherent during the campaign, testified that to his knowledge the Union never actually formed an in-plant organizing committee. In any event, Barranco specifically instructed Collison and the other five or six particularly active union adherents to encourage employees to attend the union meetings so that Barranco himself could answer any questions the employees might have.

[19] *Mike Yurosek & Sons*, 225 NLRB 148, 150 (1976), and cases cited therein.

[20] See, e.g., *Tennessee Plastics, Inc.*, 215 NLRB 315, 319 (1974); *Owens-Corning Fiberglas Corp.*, 179 NLRB 219, 223 (1979). As noted above, there is no evidence which would even arguably support a finding that Simmons was acting on behalf of the Union in his comments to Trice.

3. Subsequent to the filing of the petition herein and prior to the date of the election, the Petitioner, through its agents, representatives, adherents and others, made and issued misleading and material misrepresentations concerning the record of work stoppages engaged in by the Petitioner and concerning the financial condition of the Employer, at a time and under conditions and circumstances which effectively denied the Employer an opportunity to rebut such misrepresentations.

4. Subsequent to the filing of the petition herein and prior to the election, Petitioner, by its agents, representatives, adherents and others, made and issued misleading and material misrepresentations concerning the existence of a local union to which employees would ostensibly be affiliated, when in fact the Petitioner herein had no such local union in existence at that time, and it was stipulated to at the representation hearing that any certification that issued would be in the name of the International and not the local Union.

As the Regional Director noted, the substance of these objections involves alleged misrepresentations made by the Union in several leaflets distributed to unit employees during the week preceding the election on September 27. More specifically, Respondent contended in its request for review of the Regional Director's Supplemental Decision and Certification of Representative that, in a union newsletter distributed on or about September 19, the Union deliberately and materially misled the employees by guaranteeing them that they would never experience a strike following the choice of the Union in the election, and compounded that misrepresentation by telling the employees that they had the unilateral right to choose alternatives to strikes when in fact any such alternative would require agreement of all parties, thus removing from the employees' proper and appropriate consideration the possibility of strikes as a factor in their overall considerations of how to vote.

The newsletter in question, entitled "YOUR UNION NEWS," is set out in relevant part as follows:

STRIKE? NEVER!!

When you vote the United Steelworkers of America in at CWC, you can be sure the International Union Officials in Pittsburgh, Baltimore or any other place will NOT put you on strike. First, the International Union does not have the authority to demand you to strike. Second, the local union [you and your fellow workers] must approve or disapprove the newly negotiated contract before anyone mentions strikes. And, third, the International Union Officers are concerned about preventing strikes.

* * * * *

Now, if you want to be GUARANTEED you will never, never have to strike at CWC, there are several ways to do it and still get the many benefits you need from your Company. Here are a few methods to use:

1. COMPULSORY ARBITRATION: After lengthy negotiations prove to be unsuccessful, the Company and the Union call in an arbitrator to resolve the issues. Both parties present their position and the arbitrator can take parts from both sides and come up with combined Agreement.
2. FINAL-OFFER SELECTION: Both parties submit a final offer to an arbitrator selected between the Company and the Union. This impartial arbitrator selects only one side's offer on its merits. It is the decision that both parties must accept.
3. NON-STOPPAGE STRIKE: If management and labor cannot agree, the employees stay on the job. A percentage of all the wages and the Company profits go to community service causes.

The United Steelworkers of America believes you have the right to choose which route you wish to take. YOU will make that decision after we win the election.

The newsleter went on the label as a "bold lie" an alleged claim by a "top official" of Respondent that the employees would have to strike if one of the other plants represented by the Union went on strike. Finally, the newsletter stated that the Union had "positive proof that [union] members are NOT permitted to conduct sympathy strikes," citing no-strike provisions in collective-bargaining agreements.

Respondent further contended in its request for review that, in a union leaflet distributed on or about September 21, the Union purposefully deceived the employees by referring to a "local union" to which the employees would belong, and which they would control, when in fact there is no local involved in these proceedings, and certification would run only to the International.

The leaflet in question is set out in relevant parts as follows:

WHO RUNS THE UNION?

. . . YOU DO!

In the Steelworkers. You and Your Fellow Employees Run the Union

YOU elect your own local union officers.

YOU run your own local union affairs

YOU elect your own negotiating committee.

YOU make the decision on your own union contract.

YOU choose your own shop steward.

YOU decide important policies and actions of your own union by majority vote.

YOU elect your international union officers.

YOU elect your own delegates to the international union conventions.

YOU—the membership—are the final voice of authority and decision in your Steelworkers Union.

YOU are the Union's real 'boss.'

YOU ARE THE UNION

Finally, Respondent contended that in a subsequent issue of "YOUR UNION NEWS," distributed on or about September 26, the day before the election, the Union "visciously misrepresented and distorted Respondent's financial practices by implying that Respondent's retained earnings went to Respondent's executives; Respondent asserted in this regard that "the average voter cannot be expected to properly evaluate the rather technical financial meaning of 'retained earnings!'"

The newsletter in question set out in tabular fashion what it stated to be Respondent's sales and retained earnings for each of the years 1973 through 1976; the retained earnings shown in the tables amounted to approximately $16.6 million dollars for the 4-year period. Pictured next to the tabular summary and a narrative discussion thereof is a cartoon of a man dressed in a business suit and top hat, sitting atop a pile of money, captioned "CWC fat cats sit on the money. They pay their executives but forget the employees."

During the same 1-week period prior to the September 27 elections, Respondent also disseminated campaign literature to its employees.

On September 19, the same day that the Union issued its allegedly objectionable edition of "Your Union News" in which Respondent claims the Union purported to guarantee the employees that they would never have to strike, Respondent itself issued a flyer beseeching the employees to "STOP! . . . THINK!", and alerting them that by voting to be represented by the Union, "You may be obligating yourself to a strike [and] to walk a picket line."

On September 22, following the Union's issuance of its allegedly objectionable material on September 19 and 21, discussed above, Respondent sent a letter to employees, imploring them, *inter alia*, not to make their decision on the basis of union promises, and not to take a chance on being a participant in strikes and picket lines.

In a September 23 flyer, Respondent asked the employees "[not to] trade proven company performance for empty union promises. For . . . no strikes . . . VOTE NO UNION." In a September 26 flyer, Respondent equated "Union" with, *inter alia*, "Possible strikes" and "No Union" with "No strikes . . . no possibility of interruption of your income." Once again, the flyer ends with the exhortation "for . . . no strikes . . . VOTE NO UNION."

Also on September 26, in obvious response to the Union's above-described September 26 newsletter discussion of retained earnings, Respondent sent a letter to the employees which states in relevant part:

> "The Company is in excellent short term financial condition" according to *Your Union News*. WHY? Not because Cambridge Wire Cloth is sitting on bags of money as their cartoon depicts, but because the company has reinvested in the business to expand its inventories, its buildings, its *equipment*, and *its accounts* receivable.
>
> The Steelworkers Union calls this reinvestment "retained earnings", as if it were a bad word. We believe- and every economist will support us-that investments are absolutely necessary to create jobs.

Later in this letter, Respondent accounted for the disposition of $3.8 million in retained earnings during the years 1973-76.

The Regional Director evaluated and overruled these objections under the rules set out in *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977), which at the time of the Regional Director's Supplemental Decision and Certification of Representative in December 1977 was the prevailing authority for the analysis of alleged misrepresentations in election campaigns. Subsequent to the Regional Director's Supplemental Decision and Certification of Representative, and during the pendency of this proceeding before the Fourth Circuit Court of Appeals for enforcement of the Board's bargaining order in 236 NLRB 1326 (1978), the Board issued its decision in *General Knit of California, Inc.*, 239 NLRB 619 (1978), in which it overruled *Shopping*

Kart, supra, and announced its return to the standard of review for alleged misrepresentations articulated in *Hollywood Ceramics Company, Inc.*, 140 NLRB 221 (1962). Noting this, the court in its remand directed the Board to examine the allegations of election misrepresentations under the test enunciated in *General Knit* and *Hollywood Ceramics*, which is as follows:

> [A]n election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election. However, the mere fact that a message is inartistically or vaguely worded and subject to different interpretations will not suffice to establish such misrepresentation as would lead us to set the election aside.[21]

Applying that test to the facts of this case, we note at the very outset that, whatever the merits of Respondent's contentions as to the inaccuracy or untruthfulness of the Union's above-described September 19, 21, and 26 leaflets-contentions which will be discussed *infra—Respondent had ample time to, and did, issue effective replies, as evidenced by its same day* reply to the Union's September 26 leaflet, the day before the election, and its September 22 and 23 literature dealing with strikes.[22]

With regard to the newsletter "Your Union News" distributed on or about September 19, Respondent, as outlined more fully above, contends that the Union misled the employees by guaranteeing that there would be no strikes if the Union were selected as the bargaining representative, and by promising the employees that they have the right to choose alternatives to strikes. But it is clear from the text of the newsletter set out above that the passage in question does not give a guarantee of no strikes, but rather advises the employees that they will not be called out on strike by the union leadership as an immediate result of a union victory. Thus, the newsletter tells the employees first that the Internaional Union does not have the authority to demand that employees go on strike, and second that, in any event, the local union, comprised of the Cambridge employees, must approve or disapprove the newly negotiated collective-bargaining agreement "*before* anyone mentions strikes" (emphasis supplied). Third, the employees are advised that the Union is "concerned about preventing strikes," and are given examples of how that concern has been manifested in other bargaining contexts involving the Union. Finally, the newsletter advised the employees of several possible alternatives to strikes (i.e., compulsory arbitration, final-offer selection, and nonstoppage strike) which, if agreed to between the parties, would provide assured methods by which to avoid strikes altogether.

In a subsequent portion of this same newsletter, the Union challenges the accuracy of a statement allegedly made by an Employer official 1 week earlier in which the official is alleged to have told the employees that they would have to strike if one of the other plants represented by the Union went on strike. The newsletter characterized this alleged statement "a bold lie," challenged the Employer to show positive proof of the accuracy of its alleged statements that the Cambridge employees must have a sympathy strike if another plant represented by the Union went on strike, and in turn sets out what the Union characterized as "positive-proof" that union members are not permitted to conduct sympathy strikes.

We find that, contrary to the Employer's assertions, and *whatever* the factual accuracy of any of the allegedly objectionable statements contained in this issue of "Your Union News," they do not rise to the level of unqualified guarantees that the employees would never, under any circumstances, experience a strike if they chose to to be repesented by the Union, and, in any event, contrary to Respondent's contentions, they do not 'have an overpowering impact on the inexperienced employees" and "deceitfully remov[e] from the proper and appropriate consideration by voters the possibility of strikes as a factor in their consideration of how to vote," thus "render[ing] impossible a rational decision by the voters." Moreover, as noted above, Respondent had ample time to respond, and in fact did disseminate, on September 19, 22, and 23, literature of its own in which, as seen, it directly countered what it contends was the Union's objec-

[21] 140 NLRB at 224.

[22] Nor was Respondent otherwise silent during the campaign. Thus, the Regional Director's file reveals that as early as July 20, 1977, only 5 days after the filing of the representation petition by the Union, Respondent sent a letter to all employees in which it clearly stated its opposition to the Union's efforts to represent Respondent's employees, and promised to keep the employees "fully informed of all developments." In a September 6 pamphlet entitled "Our Employees Want to Know," Respondent for the first time advised the employees to "vote No Union For . . . No Strikes," a claim it repeated, as seen above, following the Union's alleged September 19 guarantee to employees of no strikes if they voted for the Union. On September 15, in a letter to all employees, Respondent again alerted the employees to "[A]nother cost of unionization . . . the risk of strikes, [with] no wages, no fringe benefits, no unemployment compensation, picketing, dissension, and sometimes, even violence," and, in this same letter, advised the employees that the Union had been involved in work stoppages at 306 companies in 1976 extending from 10 days to 16 months' duration, and involving 63,205 employees.

tionable claim of no strikes if the employees voted for the Union.

As to the Union's September 21 leaflet entitled "WHO RUNS THE UNION?" we find no merit in Respondent's contention that this is "another purposeful deceit perpetrated upon the voters" which warrants the setting aside of the election. Respondent contends that this pamphlet misleads the employees because in fact only the International, and no local, was involved in these proceedings; certification, if obtained, would run to the International. To whatever extent the Union's pamphlet "WHO RUNS THE UNION" may otherwise have tended to give an impression that a local was already established, we find it unlikely that any such impression was in fact created, since Respondent itself, just 2 weeks earlier, in a September 6 pamphlet entitled "Our Employees Want To Know," cleary advised the employees that:

> No local union has filed the petition to represent Wire Cloth employees. If the union should win it would be the United Steelworkers of America—the international union, which would be the certified bargaining agent of Cambridge Wire Cloth employees. No local unions would be involved, the international officials of the Steelworkers Union would control your future.

So, Respondent had already made it quite clear to the employees that there was no local in existence at the time of the election, thus substantially reducing the likelihood that those same employees 2 weeks later would be duped into thinking that a local was involved in these proceedings. Moreover, as seen, the pamphlet "WHO RUNS THE UNION?" does not refer to an existing local, but instead merely implies that a local *would be* established, and that, upon such establishment, there would be an election of local union officers and a negotiating team; decisionmaking as to a collective-bargaining agreement; and selection of shop stewards--all of which matters the employees were assured by the pamphlets that they would be participating in. Cast in this light, there is even less likelihood that the employees would be somehow deceived into believing that a local union was already in existence.

Finally, in this regard, Respondent has failed to show how any possible confusion on the part of the employees as to the existence of a local union amounts to a:

> misrepresentation . . . which involved a substantial departure from the truth, at a time which prevents the other party . . . from making an effective reply, so that the misrepresentation . . . may reasonably be expected to have a significant impact on the election.[23]

Lastly, we find nothing in the Union's September 26 issue of "Your Union News" which even arguably approaches the type of "misrepresentation or other similar campaign trickery" which would require the setting aside of an election under the *Hollywood Ceramics* standard enunciated above. Respondent's contention that the article in question purports to indicate that corporate retained earnings end up in the pockets of corporate executives is belied by the text of the article itself which clearly states that an:

> "Increase in Retained Earnings unsually reflect [sic] Net Profits remaining after the payment of Dividends, if any, to stockholders. The Company showed increases in Retained Earnings [in 1974–76]. As you can see, the Company is making a sizeable profit."

Morever, any untoward implications which might arguably be gleaned from the article in question were quite effectively countered by Respondent's own response of the same date, in its September 26 letter to employees excerpted in relevant part above.

In light of all the above, we do not find the Union's conduct referred to in Respondent's Objections 3 and 4 to be of the type warranting the setting aside of an election under the standard for such a step set out in *Hollywood Ceramics, supra.*[24] Therefore, Respondent's Objections 3 and 4 are overruled.

Objection No. 5

> 5. By the foregoing and by the other acts and conduct, Petitioner, through its agents, representatives, adherents and others, interfered with, restrained, and coerced eligible voters in the exercise of their rights under the Act and destroyed the requisite laboratory conditions necessary for the voters to make a free, fair and reasoned choice in the election conducted herein.

Respondent presented no evidence in support of this objection, not previously considered in the foregoing objections. Accordingly, Objection 5 is overruled.

Having confirmed the validity of the election in Case 5-RC-10138, we hereby affirm the Certifica-

[23] *Hollywood Ceramics, supra,* 140 NLRB at 224

[24] Because Member Zimmerman finds the conduct alleged in Objections 3 and 4 to be unobjectionable under *General Knit, supra,* he finds it unnecessary to determine whether he would adhere to the principles enunciated in that decision in a case where its application would result in setting the election aside.

tion of Representative issued therein, and we hereby affirm our Order in Case 5-CA-9173.[25]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board affirms its Decision and Order issued in this proceeding on June 30, 1978 (reported at 236 NLRB 1326), and hereby orders that the Respondent, The Cambridge Wire Cloth Company, Inc., Cambridge, Maryland, its officers, agents, successors, and assigns, shall take the action set forth therein.

[25] 236 NLRB 1326 (1978).